

US District Court - Delaware
In Re Federal Mogul - Chapter 11

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1 Q Was another factor that went into
2 the share allocation the types of
3 asbestos-containing products manufactured by
4 each CCR member?

5 Is that information that was
6 considered in setting the shares?

7 A I don't think it was information
8 that was relevant to the initial shares.

9 Those were based on the
10 historic occupational averages.

11 So it was not directly based
12 on products -- only indirectly, to the extent
13 those products could have given rise to the
14 claims that eventually gave rise to the
15 settlements that became the pre-ACF settlements
16 that were factored into the equation for
17 purposes of setting the initial shares.

18 For purposes of adjusting the
19 shares, we would look at information regarding a
20 whole host of different pieces of information.

21 In particular cases, it could
22 be the nature of the products and the claims
23 with respect to those products.

24 Q In setting the subsequent
25 allocations, would the CCR take into

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1 consideration information about job sites where
2 particular products had been identified?

3 A It could.

4 Q Was job site information at all --
5 or work site information at all relevant to the
6 share-allocation process?

7 A Yes.

8 Q Could you describe how that
9 information was used in the share-allocation
10 process?

11 A Well, it was used in many different
12 ways; but one principal way in which it was used
13 was in connection with special claims
14 categories, which were categories of claims that
15 were often based on the fact that all of the
16 claims arose out of a particular job site.

17 The claims would be carved out
18 of the traditional occupational grouping into
19 which they would otherwise fall.

20 And we would investigate the
21 evidence relating to the cases at that
22 particular job site, and come up with job
23 site-specific recommendations as to the relative
24 liability of the members for claims arising out
25 of that job site -- based in part on the

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1 evidence as to product identification at that
2 particular job site.

3 Q What other types of information, in
4 addition to types of asbestos-containing
5 products, places where the products were
6 distributed, job site, and occupation of the
7 plaintiff, did the CCR and Shea & Gardner take
8 into account in adjusting the allocation of
9 shares between and amongst the CCR members?

10 A Well, in addition to all of the
11 different kinds of information that are
12 specifically identified in the CCR producer
13 agreement, we and the CCR members would look at
14 the relative strength or weakness of the product
15 identification case made against particular
16 members across the board -- by job site, by
17 plaintiff counsel, by type of claimants.

18 We would look at evidence with
19 respect to -- of the total number of claims
20 brought against a particular company, in a
21 particular state, in the particular job site, by
22 a particular plaintiff.

23 You know, what was the
24 strength of that product ID evidence or the
25 case, generally, across the board?

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1 How many of those cases really
2 presented legitimate product identification, and
3 what was the view of the defense counsel or
4 liaison counsel or the members themselves as to
5 the relative strength of the case against the
6 members?

7 Which members did the
8 plaintiffs target? Who were the plaintiffs that
9 the plaintiffs (sic) believed they had the
10 strongest case, and why?

11 So we didn't limit ourselves,
12 but we looked at what was actually happening in
13 the cases.

14 What was the strength of the
15 case, as perceived by the plaintiff and by our
16 own claim staff and defense lawyers, to come up
17 with our best informed judgment as to the
18 relative strength or weakness of the claim in a
19 particular place, against a particular member,
20 relative to the other members.

21 Q Would you agree that the liability
22 share-allocation process was designed to
23 allocate as fairly as possible the overall costs
24 of the claims in proportion to each CCR
25 defendant's perceived share of its own

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1 liability?

2 A No; I don't think I can agree with
3 that.

4 Q How would you describe what the
5 share-allocation process was designed to do?

6 A I think it was designed to reflect
7 the process for adjusting shares to reflect
8 changes in the cases over time, identified
9 factors and trends that would reflect changes in
10 relative liability from the liability that faced
11 the members initially.

12 And it was a process that the
13 members agreed to. And it left them with the
14 option of leaving the center if they, at some
15 point in time, became of the view that they
16 didn't want to remain a member of the Center for
17 any reason, including the reason that they were
18 dissatisfied or unhappy about a particular share
19 adjustment.

20 But the members needed a
21 process to share the costs of settlements and
22 the costs of defense, and this was a negotiated
23 agreement that they all agreed to.

24 Q And in your role as special counsel,
25 was it your practice to try to allocate the

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1 shares as fairly as possible, taking into
2 account all the information that went into the
3 share-allocation process?

4 A We did not allocate the shares.
5 We did monitor factors and
6 trends in the litigation; and where we became
7 confident that the existing shares for a
8 particular group of claims might not fairly
9 reflect the relative liability of the members
10 for those claims, we would take it upon
11 ourselves to make recommendations to the members
12 to adjust those shares to more fairly reflect
13 relative liability among the members.

14 And that was basically our
15 job, as we saw it.

16 Q Turning to the producer agreement --
17 the producer agreement, page 2, states that --
18 "WHEREAS, Participating Producers believe it is
19 important to establish an organization that
20 will, on behalf of all Participating Producers,
21 resolve meritorious asbestos-related claims in a
22 fair and expeditious manner and, where
23 necessary, defend asbestos-related claims
24 efficiently and economically..."

25 Do you see that, Mr. Hanlon?

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1 A I do.

2 Q Would you agree that one of CCR's
3 principal goals was to "resolve meritorious
4 asbestos claims in a fair and expeditious manner
5 and, where necessary, defend asbestos-related
6 claims efficiently and economically"?

7 A I believe that that was a stated
8 goal of the CCR.

9 Q Do you believe that the CCR and its
10 members -- including you and your law firm, as
11 special counsel to the CCR -- attempted to meet
12 that goal?

13 A Yes.

14 Q Do you believe you were at all
15 successful in meeting that goal?

16 A You know -- "at all successful"?

17 I mean, I don't know what you
18 mean by that.

19 Q Well, did you accomplish that goal
20 in some significant manner?

21 MR. FRIEDMAN: Object to form.

22 A I think that that was a decision for
23 the members.

24 It was their claims, their
25 liability; and as I said before, they had the

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1 option at any point in time of withdrawing from
2 the Center on 60 days' notice.

3 And I think for each company
4 the decision was whether they were better off
5 handling their litigation in the CCR or out of
6 the CCR on their own.

7 And for the companies that
8 participated in the CCR for as long as they did
9 participate in the CCR, I think that they
10 thought that the CCR was handling those cases
11 for them in a way that was better for their
12 companies than if they were handling them on
13 their own.

14 Q Do you know a man named "Paul
15 Hanly"?

16 A Yes.

17 Q Who is Mr. Hanly, and how do you
18 know him?

19 A Mr. Hanly is a man of many talents.

20 But among them, he is a lawyer
21 who practices in New York City. And for a
22 significant period of time, he was the primary
23 U.S. counsel for Turner & Newall in the United
24 States asbestos litigation.

25 Q Personal injury litigation?

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1 A And property damage as well.

2 Q What role did Mr. Hanly have with
3 respect to the CCR?

4 How did you meet with him, how
5 did you interact with him?

6 A Mr. Hanly was, as I said, the
7 national counsel for Turner & Newall,
8 Flexitallic, and Ferodo for -- at least for a
9 significant period of time.

10 I think I met him -- well, I
11 met him initially as counsel for a non-CCR
12 asbestos defendant sometime in the '80s, just in
13 connection with asbestos defense work.

14 And then we met again when his
15 firm really took over the primary role for
16 Turner & Newall in U.S. asbestos litigation
17 sometime, I think, in the early '90s.

18 He was a trusted advisor and
19 counsel to Mr. Baines in connection with
20 Mr. Baines' service on the CCR's board of
21 directors, and we worked cooperatively with
22 Mr. Hanly and his colleagues and his firm on a
23 whole host of matters.

24 Q Would Mr. Hanly from time to time
25 appear at the CCR board meetings?

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1 A For a period of time, he attended
2 regularly.

3 Q And would Mr. Hanly from time to
4 time be provided with the settlement agreements
5 that CCR entered into on behalf of Turner &
6 Newall, among others, with asbestos plaintiffs?

7 A I certainly believe he had access to
8 those agreements. I do not know the extent to
9 which he actually exercised that access.

10 Q So you know he had access, you just
11 don't know the extent to which he exercised that
12 access; is that correct?

13 A That's correct.

14 Q Did Mr. Hanly ever appear in court
15 on behalf of Turner & Newall in personal injury
16 litigation, during the time it was a CCR member?

17 A I don't know for sure.

18 It would be unusual for him to
19 do that, and I would be surprised if he did so
20 with respect to the personal injury litigation.

21 I know he actively defended
22 Turner & Newall in property damage litigation
23 during that time; but as I explained earlier,
24 the CCR had the exclusive authority to act on
25 behalf of members, including the authority to

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1 retain counsel to represent the members in the
2 litigation.

3 And it would be unusual for a
4 member's own lawyer to appear on behalf of a
5 member, except with respect to punitive damages
6 issues in a particular piece of litigation.

7 Q Do you know if Mr. Hanly took over
8 principal responsibility for representing Turner
9 & Newall after it left the CCR?

10 A I believe he did.

11 Q Do you know if he was involved in
12 negotiating some or any asbestos personal injury
13 claims with plaintiffs during the time that
14 Turner & Newall was a CCR member?

15 A I believe that Mr. Hanly would have
16 been consulted by CCR claim staff.

17 But I suspect in most
18 instances, he would not have actually been
19 negotiating on behalf of T&N. He would simply
20 have been consulting with the CCR representative
21 who would have been responsible for negotiating
22 settlements.

23 Q Was it the regular practice of Mike
24 Rooney and other members of the claim staff who
25 worked for him to consult on a periodic basis

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1 with Mr. Hanly or other national counsel for CCR
2 member defendants about the claims they were
3 settling on their behalf?

4 A I'm not sure I can speak to the
5 regular practice.

6 I'm simply aware that there
7 was regular consultation; but the extent of that
8 consultation and the parameters on it, I don't
9 really know.

10 Q Do you believe, based on your
11 interactions with Mr. Hanly, that he became
12 sufficiently familiar with the CCR and its
13 operations to have an understanding as to how it
14 operated and settled claims on behalf of its
15 members?

16 A Yes.

17 Q Let's talk for a minute about
18 Georgine. There was a fair amount of discussion
19 of it when you were being interrogated by
20 Mr. Friedman, but I don't know that we had ever
21 defined it for purposes of this deposition.

22 What was the Georgine class
23 action settlement?

24 A It was a settlement that was
25 negotiated by the CCR on behalf of its members

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1 with the then leaders of the plaintiffs steering
2 committee in the asbestos MDL pending before
3 Judge Wiener, which purported to settle all
4 future claims brought on behalf of a class of
5 plaintiffs who had been exposed at any time to
6 any asbestos-related products of the CCR
7 members -- but who, as of the time of the
8 settlement, had not yet manifested any injury as
9 a result of that exposure.

10 It was crafted as an opt-out
11 settlement, class settlement -- subject to court
12 approval.

13 And as I had mentioned
14 earlier, it was basically agreed to at the same
15 time that a complaint was filed in the Eastern
16 District of Pennsylvania for purposes of
17 adjudicating, ultimately, the fairness of that
18 settlement and its applicability to the defined
19 class.

20 Q And after the Supreme Court
21 ultimately affirmed the Third Circuit's reversal
22 of the district court decision approving the
23 class action settlement, what, if any,
24 phenomenon did you observe with respect to
25 claims filing levels against CCR members post

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1 summer of 1997?

2 A I don't recall observing any
3 phenomenon.

4 Q Did you observe an increasing number
5 of claims being filed against CCR members during
6 the '97-'98 time frame, as compared to the years
7 when the Georgine injunction was in effect?

8 MR. WYNER: Asked and
9 answered.

10 We've been over this.

11 A Certainly, once the injunction was
12 lifted, because the claims were no longer
13 subject to an injunction, we received, at the
14 CCR, many more claims than we had been receiving
15 during the injunction period -- for the reasons
16 I had explained.

17 Q Did you come to a view -- strike
18 that.

19 Did the higher claim filing
20 levels post Georgine tail off in any significant
21 degree between, say, 1997 and the year 2000?

22 MR. FRIEDMAN: Object to form.

23 A Not that I recall, no.

24 Q I'm going to quote you something
25 that you told me a couple of years ago about the

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1 share-allocation system.

2 MR. WYNER: What are you
3 quoting from?

4 MR. FINCH: I'm quoting from a
5 deposition taken in the Armstrong --

6 MR. WYNER: Was that
7 deposition subject to a protective order?

8 MR. FINCH: It is, which is
9 why I'm not going to produce the
10 deposition or use it for purposes --

11 MR. WYNER: No; I think you're
12 using it.

13 You're quoting from it?

14 BY MR. FINCH:

15 Q Well, let me ask it this way:

16 Would you agree, Mr. Hanlon,
17 with the statement that -- referring to the
18 share allocation process:

19 Over time we would make -- my
20 law firm would make recommendations to the
21 members, based on discussions with them, to
22 adjust the historical averages that gave rise to
23 those shares.

24 And I think by 1995, the
25 occupational matrix, if you will -- the

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1 occupational averages that were used to generate
2 the shares were no longer substantially tied to
3 the historical settlement averages, but were
4 based on judgments about the relative
5 liabilities of each of the members for
6 particular types of cases in the tort system
7 that the Center members had faced from the
8 inception of the litigation to that point in
9 time.

10 But basically, it reflected
11 the members' decision to share on a relevant
12 basis, based on their perceived relative
13 liabilities for different occupations.

14 MR. WYNER: I'm going to
15 object. That sounds like a quote from the
16 deposition transcript, which I believe was
17 done pursuant to a protective order which
18 provided that the materials could only be
19 used for purposes of that case.

20 And if it has, in fact, now
21 been used for purposes of this case, the
22 CCR reserves the right to seek appropriate
23 sanctions under that protective order.

24 BY MR. FINCH:

25 Q Let me see if I can ask the question

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1 in a different way, without using the deposition
2 from the prior case.

3 Would you agree with me that
4 the liability-sharing formula that the CCR
5 members agreed to was the subject of much
6 analysis and discussion between and among the
7 CCR members and with your law firm?

8 A Yes.

9 Q Did Turner & Newall, prior to the
10 time it exited the CCR, ever complain that its
11 liability share was too high?

12 A Yes.

13 Every member complained that
14 its liability share was too high at some point
15 in time.

16 Q And every member, I take it, had an
17 incentive to have its liability share determined
18 to be as low as possible; correct?

19 A Other things being equal, I think
20 that is correct, yes.

21 Q Would you agree with me that one of
22 the goals for the CCR was to manage the asbestos
23 litigation in as efficient and cost-effective a
24 way as possible for its members?

25 MR. WYNER: Asked and

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1 answered.

2 You just read the provision of
3 the producer agreement.

4 MR. FINCH: It's a different
5 question.

6 MR. WYNER: I don't agree.

7 That's asked and answered.

8 A I believe that was a stated goal of
9 the CCR and a goal of its members on the claim
10 staff, yes.

11 Q Let's talk about Judge Wiener's
12 administrative orders.

13 Am I correct in understanding
14 that Judge Wiener is a judge -- a federal judge
15 in the Eastern District of Pennsylvania;
16 correct?

17 A Yes.

18 Q And he is a judge to whom all
19 asbestos personal injury cases that are in the
20 federal system are transferred, for purposes of
21 pretrial proceedings and discovery and case
22 management; correct?

23 A Basically, yes.

24 Q And you referred in your testimony,
25 under questioning from Mr. Friedman, to some

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1 administrative orders that Judge Wiener had
2 entered which had the effect of doing certain
3 things to asbestos claims; is that correct?

4 MR. FRIEDMAN: Object to form.

5 A I'm not sure I buy that language.

6 Q Okay. You referred to certain
7 administrative orders entered by Judge Wiener;
8 correct?

9 A I think I referred to certain case
10 management orders.

11 Q Is it correct that the case
12 management orders did not determine as a matter
13 of law that unimpaired non-malignant claimants
14 did not have valid claims -- but instead
15 prioritized the cases that were pending, such
16 that only the claims of the more serious
17 diseases would be remanded back to the local
18 federal courts for trial?

19 A You know, I think those agreements
20 speak for themselves.

21 I haven't looked at them in a
22 long time --

23 MR. WYNER: The "orders," you
24 mean?

25 THE WITNESS: I mean the

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1 orders.

2 What did I say?

3 MR. WYNER: "Agreements."

4 THE WITNESS: I'm sorry. I

5 meant the orders.

6 A -- I haven't looked at them in a
7 long time.

8 My recollection is consistent
9 with -- with the thrust of your statement, which
10 is that they did not attempt to define
11 "unimpaired" as opposed to "impaired," but they
12 did prioritize the cases in a way that resulted
13 in only the more serious cases, or cases that
14 were deemed by the defendants to be impaired,
15 would be subject to remand.

16 But it has been some time
17 since I've looked at those orders.

18 Q Turning to the subject of certain
19 doctors -- to your knowledge, did the CCR claims
20 analyst who settled the claims on behalf of the
21 CCR take into consideration the identity of the
22 plaintiff's doctor in some cases, in assessing
23 the plaintiff's claim?

24 A In some cases? Certainly, yes.

25 Q Were there CCR settlement agreements

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1 that would refuse to accept medical diagnoses
2 from certain doctors?

3 MR. WYNER: Asked and
4 answered.

5 A I think that misstates what an
6 agreement does.

7 An agreement doesn't "refuse."
8 An agreement is an agreement, and there were
9 certain agreements that provided that the
10 reports of certain doctors would not qualify for
11 compensation.

12 Q Do you know if Mike Rooney and
13 others on the claims handling staff would take
14 into account the identity of the plaintiff
15 doctors in the values they would agree to pay
16 non-malignant cases?

17 A I believe that from time to time, I
18 believe that certain diagnoses by certain
19 doctors were not worth very much, and they would
20 so argue, and that that would be one of the
21 factors argued that would be argued about in
22 negotiating appropriate compensation.

23 Q And that would be one of the factors
24 that would be reflected in the settlement
25 amounts; correct?

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1 A From time to time, I suspect that's
2 correct, yes.

3 Q Why didn't the CCR require in every
4 agreement that the plaintiffs submit evidence of
5 exposure to every CCR defendant who was named in
6 the lawsuit for purposes of entering into a
7 settlement?

8 MR. WYNER: But don't reveal
9 privileged communications.

10 A I don't understand the question.

11 Q Okay.

12 A Try it again.

13 Q I walked you through the settlement
14 agreement, Hanlon 2 --

15 A Right.

16 Q -- which said that in order for
17 there to be a settlement, the plaintiff had to
18 demonstrate exposure to the asbestos-containing
19 products of one or more members of the CCR;
20 correct?

21 A That's correct.

22 Q Okay. And then it also had a
23 provision that said that the plaintiff must, in
24 good faith, attempt to submit evidence
25 concerning plaintiff's exposure to every CCR

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1 member's asbestos-containing products to which
2 the plaintiff claims exposure.

3 A Right.

4 Q That was an add-on.

5 That requirement that they
6 submit evidence of exposure to every CCR named
7 defendant's products, as I understand it, was
8 not a requirement in every single settlement
9 agreement; is that correct?

10 MR. FRIEDMAN: Object to the
11 form.

12 A I think that's probably correct.

13 Q Okay. If you can answer the
14 question without revealing privileged
15 communications, why did the CCR not require
16 exposure to every CCR named defendant's products
17 in every settlement agreement?

18 MR. FRIEDMAN: Object to the
19 form.

20 A I don't know what you mean by
21 "require."

22 That's what I'm -- I'm --

23 Q Require --

24 A You're suggesting, I think, that
25 that's a requirement for compensation.

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1 But even in the agreement that
2 you referred to, the requirement that they
3 provide what information they have didn't
4 require them to establish that they did have
5 product identification against every member.

6 So I'm not sure I
7 understand --

8 Q Let me ask it this way...

9 A -- your question.

10 Q Why didn't, for purposes of
11 compensation, CCR require that the plaintiff
12 establish product identification against every
13 named CCR defendant?

14 A Because it would never have gotten a
15 plaintiff lawyer to agree to that term.

16 Q Were the CCR claims handlers, like
17 Mike Rooney, attempting to settle the cases that
18 they were negotiating for the lowest total price
19 possible?

20 A Particularly with respect to
21 inventory settlements, any settlement decision
22 by the CCR involved a whole range of strategic
23 considerations.

24 But other things being equal,
25 in most cases, the cost of settlement was a

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1 primary consideration.

2 And the Center was always
3 trying to negotiate the best deal it could for
4 its members -- which would include, generally,
5 trying to get the lowest price possible.

6 And one of the factors that
7 they would take into account in trying to
8 negotiate the best price possible would be the
9 strength and product identification, member by
10 member, across all the members named in the
11 case.

12 And if they had an argument
13 that the identification was stronger as to some
14 than as to others and that there was no product
15 identification as to some, that would certainly
16 be a factor that they would use to negotiate the
17 best price possible.

18 Q Did you ever come to a view, one way
19 or another, whether the CCR was able to obtain
20 negotiating advantages in its dealings with
21 plaintiffs' lawyers, based on the fact that the
22 plaintiffs' lawyer could settle cases against 20
23 defendants at once -- which settlement
24 advantages would not necessarily be available if
25 the defendant was dealing with the plaintiffs on

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